

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

<p>ARIZA, et. al,</p> <p>Plaintiffs,</p> <p>v.</p> <p>LUXOTTICA RETAIL NORTH AMERICA,</p> <p>Defendant.</p>	<p>Case No. 17-cv-5216 (E.D.N.Y.).</p> <p>CLASS ACTION</p>
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CLASS ACTION SETTLEMENT AGREEMENT

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Plaintiffs and Class Representatives, Thomas Allegra, Yesenia Ariza, Mariana Elise Emmert, Stuart Rogoff, Gracelyn Tenaglia, and Melissa Verrastro (collectively, “Plaintiffs”), and Defendant Luxottica of America Inc. d/b/a LensCrafters f/k/a Luxottica Retail North America Inc. d/b/a LensCrafters (“LensCrafters”) (collectively, the “Parties”), hereby enter into this Class Action Settlement Agreement (“Settlement” or “Settlement Agreement” or “Agreement”) which provides for the settlement and final resolution of the Action defined below, subject to the approval of the Court. Plaintiffs and LensCrafters are, at times, individually referred to herein as a “Party” and collectively as the “Parties.”

RECITALS

A. On September 5, 2017, Plaintiffs filed a putative class action complaint against LensCrafters in the United States District Court for the Eastern District of New York captioned *Ariza et al v. Luxottica Retail North America*, No. 1:17-cv-05216-PKC-LB (E.D.N.Y.), the United States District Court for the Northern District of California, captioned *Infante v. Luxottica Retail North America*, No. 3:17-cv-05145-WHA (N.D. Cal.), and in the United States District Court for the Southern District of Florida, captioned *Tenagila v. Luxottica Retail North America*, No. 2:17-cv-14311-DMM (S.D. Fla.).

B. All three cases were consolidated by the Court on December 8, 2017.

C. On September 21, 2018, Plaintiffs filed their Second Amended Consolidated Complaint (the “Second Amended Complaint”).

D. The Second Amended Complaint alleges among other things that LensCrafters’ AccuFit marketing touted the superiority of AccuFit’s 0.1mm measurements over traditional measurements. According to Plaintiffs, this was false or misleading because LensCrafters allegedly lacks the manufacturing capability to fully take advantage of such precise measurements. LensCrafters denies that it committed any wrongdoing.

E. The Second Amended Complaint alleges violations of state consumer protection laws, including; California’s Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, *et seq.*; California’s False Advertising Law, Cal. Bus. & Prof. Code § 17500, *et seq.*; California’s Consumer Legal Remedies Act, Cal. Civ. Code § 1750, *et seq.*; Florida’s Deceptive and Unfair Trade Practices Act, § 501.201, *et seq.*; New York General Business Law § 349 *et seq.*; New York General Business Law § 350 *et seq.*, and for unjust enrichment and fraud under each state’s common law.

F. LensCrafters filed an answer to the Second Amended Complaint on October 30, 2018.

G. On October 29, 2020, Plaintiffs filed a Motion for Class Certification; and, on December 13, 2021, the Court granted class certification.

H. The parties briefed two motions for summary judgment filed by LensCrafters, the initial of which led the Court to dismiss Plaintiffs’ California equitable claims and permitted Plaintiffs’ remaining claims to proceed, the second is still pending before the Court.

I. This Action has involved over five years of litigation activity, during which time the Parties engaged in substantial pretrial activity in addition to the summary judgment briefing

described above, including extensive written discovery, the production of over 67,000 pages of documents, 40 depositions, the filing of numerous letter motions concerning discovery disputes, expert reports from 13 experts, *Daubert* motions, and preparation for trial, which is set to begin in less than one month on July 10, 2023, absent this Settlement.

J. The Parties have conducted multiple mediations with the assistance of former Judge of the U.S. District Court, District of New Jersey, John C. Lifland, and former California Superior Court Judge, Daniel Weinstein.

NOW, THEREFORE, the Parties, in consideration of the promises, covenants and agreements herein described, and for other good and valuable consideration acknowledged by each of them to be satisfactory and adequate, and intending to be legally bound, do hereby mutually agree as follows:

1. DEFINITIONS

In addition to the terms defined above, the following terms shall have the meanings set forth below:

1.1 Recitals. The recitals set forth above are incorporated by reference and are explicitly made part of this Agreement.

1.2 Definitions. As used in this Agreement, capitalized terms shall have the meanings provided below, unless defined elsewhere in the Agreement:

(a) “Action” means the consolidated civil action captioned *Ariza et al v. Luxottica Retail North America*, No. 1:17-cv-05216-PKC-LB, United States District Court for the Eastern District of New York.

(b) “Approved Claim” means a Claim submitted by a Claimant that the Settlement Administrator, in its discretion and subject to review by Plaintiffs’ Counsel, determines to be timely, accurate, complete, and in proper form.

(c) “Approved Claimants” means those Claimants who submitted Approved Claims.

(d) “Claim” means a request for relief pursuant to Section 11.1 of this Settlement Agreement submitted by a Class member on a Claim Form to the Settlement Administrator in accordance with the terms of the Settlement Agreement.

(e) “Claim Form” means the online web form interface and written Claim form to be provided by the Settlement Administrator to Class members. The online Claim Form interface shall be developed by the Settlement Administrator and is subject to review and approval by the Parties. The written Claim Form shall be substantially in the form attached hereto as Exhibit A.

(f) “Claim Deadline” means the date by which all Claim Forms must be postmarked or received by the Settlement Administrator to be considered timely. The Claim Deadline shall be 30 days after the Final Approval (Final Fairness) Hearing.

(g) “Claimant” means a Class member who has submitted a Claim by the Claim Deadline.

(h) “Class” or “Nationwide Settlement Class” means all U.S. residents who, from September 5, 2013 to the date of the Preliminary Approval Order (as defined below), purchased prescription eyeglasses in the United States from LensCrafters after being fitted with AccuFit. Excluded from the Class are LensCrafters; LensCrafters’ employees, officers, and directors, as well as members of their immediate families; LensCrafters’ legal representatives, heirs, and successors; and any judge, justice, or judicial officer who have presided over this matter and the members of their immediate families and judicial staff.

(i) “Class Counsel” shall mean the law firm of Cohen Milstein Sellers & Toll PLLC.

(j) “Class Representatives” means Thomas Allegra, Yesenia Ariza, Mariana Elise Emmert, Stuart Rogoff, Gracelynn Tenaglia, and Melissa Verrastro.

(k) “Effective Date” means the first date by which all of the following events shall have occurred:

i. The Court has entered the Preliminary Approval Order (as defined herein), substantially in the form of Exhibit B attached hereto;

ii. The Court has entered the Final Approval Order and Judgment (as defined herein), substantially in the form of Exhibit C attached hereto, and the Final Approval Order and Judgment has been entered approving the Settlement Agreement in all respects, dismissing the Action with prejudice, and such Final Approval Order and Judgment being immediately appealable; and

iii. The time for appeal from the Final Approval Order and Judgment shall have expired, or if any appeal of the Final Approval Order and Judgment as to the Settlement Agreement is taken, that appeal shall have been finally determined by the highest court, including motions for reconsideration and/or petitions for writ of certiorari, and which Final Approval Order and Judgment is not subject to further adjudication or appeal, and has been confirmed in whole pursuant to the terms of the Settlement Agreement and Final Approval Order and Judgment as entered and effective.

(l) “Email Notice” means the email notice, substantially in the form of Exhibit D attached hereto. The Email Notice will be sent electronically to the last known email address of all Class members to the extent available.

(m) “Escrow Fund” shall be an account established by the Settlement Administrator at a financial institution approved by Class Counsel and LensCrafters, and shall be maintained as a qualified settlement fund pursuant to Treasury Regulation § 1.468B-1, et seq.

(n) “Final Approval (Final Fairness) Hearing” or “Final Approval Hearing” means the hearing at which the Court shall: (i) determine whether to grant final approval to this Settlement Agreement; (ii) consider any timely objections to this Settlement and all responses thereto; and (iii) consider Plaintiffs’ Counsel’s requests for an award of attorneys’ fees, costs and expenses, and Service Awards.

(o) “Final Approval Order and Judgment” shall mean the order finally approving this Settlement Agreement, which shall be substantially in the form of Exhibit C attached hereto.

(p) “Long Form Notice” means the Notice of Proposed Settlement of Class Action to be published on the Settlement Administrator’s website, substantially in the form attached as Exhibit E.

(q) “Net Settlement Fund” shall mean the Settlement Fund less (subject to Court approval) (1) attorneys’ fees plus Class Counsel’s reasonable expenses incurred in this litigation; (2) Service Awards to the Class Representatives; and (3) Notice and Administration Expenses.

(r) “Notice” shall mean, collectively, the communications by which Class members are notified of this Settlement Agreement and the Court’s Preliminary Approval of this Settlement Agreement. This includes the Email Notice, Postcard Notice, and a dedicated website which shall include the Long Form Notice.

(s) “Notice Date” shall be 30 days after entry of the Preliminary Approval Order.

(t) “Party” and “Parties” shall have the meaning set forth in the introductory paragraph of this Settlement Agreement.

(u) “Person(s)” shall mean any natural person, individual, corporation, association, partnership, trust, or any other type of legal entity.

(v) “Plaintiffs” shall have the meaning set forth in the introductory paragraph of this Settlement Agreement.

(w) “Plaintiffs’ Counsel” shall mean the law firms of Cohen Milstein, Sellers & Toll PLLC and Gordon & Partners P.A., Law Office of Christopher Rush, and the Law Office of Charles Reichmann.

(x) “Preliminary Approval” or “Preliminary Approval Order” shall mean the Court’s entry of an order of preliminary approval of this Settlement Agreement, which shall be substantially in the form of Exhibit B attached hereto and submitted to the Court in connection with Preliminary Approval.

(y) “Postcard Notice” or “Short Form Postcard Notice” means the postcard notice to be sent to the last known address of all Class members in accordance with Paragraphs 7.5 and 7.6, substantially in the form as attached hereto as Exhibit D.

(z) “Released Claims” shall have the meaning set forth in Paragraphs 12.1 and 12.2 of this Settlement Agreement, and with regard to Released Claims:

(i) “Plaintiff Releasing Parties” shall have the meaning set forth in Paragraph 12.1 of this Settlement Agreement.

(ii) “LensCrafters Released Parties” shall mean Luxottica of America Inc., including but not limited to its owners, shareholders, parents, subsidiaries, affiliated entities, predecessors, successors, assigns, divisions, officers, directors, principals, managers, employees, agents, independent contractors, joint ventures, general or limited partners or partnerships, contractors, limited liability companies, and legal representatives, as well as the past and present, insurers, law firms, heirs, personal representatives, executors, administrators, predecessors, successors, and assigns of each of the foregoing.

(iii) “LensCrafters Releasing Parties” shall mean Luxottica of America Inc. d/b/a LensCrafters f/k/a Luxottica Retail North America Inc. d/b/a LensCrafters.

(iv) “Releasing Parties” shall mean “Plaintiff Releasing Parties” and “LensCrafters Releasing Parties.”

(aa) “Request for Exclusion” shall mean a request to be excluded from the Class, submitted in accordance with the terms and conditions of this Settlement Agreement and the instructions provided in the Notice.

(bb) “Service Awards” shall mean cash awards paid to the Class Representatives.

(cc) “Settlement Administrator” shall mean Kroll Settlement Administration, LLC.

(dd) “Settlement Fund” shall mean a total of \$39 million paid by LensCrafters into the Escrow Fund, as set out below in Paragraph 3.1.1.

(ee) “Settlement Class List” shall mean a list of all LensCrafters customers that meet the proposed “Class” defined in Section 1.2(i), which LensCrafters will compile based on a good faith review of its records and provide to the Settlement Administrator.

1.3 Singular and Plural. Definitions used herein shall apply to the singular and plural forms of each term defined.

1.4 Gender. Definitions used herein shall apply to the masculine, feminine, and neutral genders of each term defined.

1.5 References to a Person. References to a Person are also to the Person’s permitted successors and assigns.

1.6 Terms of Inclusion. Whenever the words “include,” “includes” or “including” are used in this Settlement Agreement, they shall not be limiting but rather shall be deemed to be followed by the words “without limitation.”

2. COOPERATION BY THE PARTIES

2.1 The Parties and their counsel agree to cooperate fully with each other to promptly execute all documents and take all steps necessary to effectuate the terms and conditions of this Settlement Agreement. The Parties and their counsel further agree to support the final approval of the Settlement Agreement including against any appeal of the Final Approval Order and Judgment including any collateral attack on the Settlement Agreement or the Final Approval Order and Judgment.

3. CONSIDERATION TO PLAINTIFFS

3.1 In exchange for the terms and conditions set forth in this Settlement Agreement, including without limitation the Released Claims set forth in Paragraph 12 below, LensCrafters will provide the following consideration:

3.1.1 Settlement Fund. LensCrafters will pay \$39,000,000 (thirty-nine million dollars) to establish a common fund for the benefit of the Class. The Settlement Fund shall be paid in the following manner:

i. LensCrafters shall pay \$5,500,000 (five million five-hundred thousand dollars) of the Settlement Fund into the Escrow Fund within ten (10) calendar days of Preliminary Approval of the Settlement.

ii. LensCrafters shall pay \$33,500,000 (thirty-three million five hundred thousand dollars) of the Settlement Fund into the Escrow Fund no later than ten (10) calendar days after the Court enters the Final Approval Order and Judgment.

3.2 Distribution of the Net Settlement Fund. This is a claims-based settlement. There will be no reversion of the Settlement Fund to LensCrafters unless the Court does not approve the Settlement or the Settlement is reversed on appeal. All Class members who submit an Approved Claim, as defined above, will receive a pro rata share of the Net Settlement Fund according to the following guidelines:

3.2.1 Those Class members who submit an Approved Claim shall each be eligible to receive up to \$50 for each set of prescription eyeglasses purchased from LensCrafters during the Class Period subject to *pro rata* reduction if the total claims exceed the Net Settlement Fund.

3.2.2 In the event that after distribution of Settlement benefits to the Class described above, there would be sufficient funds (after payment of administrative costs associated with a second distribution) to pay at least \$1 to each Approved Claimant, then such funds will be distributed in a second distribution to the Approved Claimants on a pro rata basis.

3.2.3. In the event that after distribution of Settlement benefits in 3.2.1 and 3.2.2 above there is anything remaining in the Net Settlement Fund then the remaining funds shall be subject to a *cy pres* distribution to be mutually agreed to by the Parties and approved by the Court.

4. CLASS COUNSEL'S FEES AND COSTS

4.1 Application for Attorneys' Fees and Expenses and Service Awards. As provided herein, and pursuant to the common fund doctrine and/or any applicable statutory fee provision, Class Counsel will apply to the Court by motion for an award to Class Counsel for attorneys' fees of up to 33 and 1/3% of the Settlement Fund, for reimbursement of reasonable expenses, for Class Representative Service Awards not to exceed \$10,000 per Class Representative, and for costs of Notice and settlement administration, to be paid from the Settlement Fund. Any such request shall be filed at least twenty-one (21) days prior to the deadline to object to the Settlement. Attorneys' fees and expenses awarded by the Court shall be allocated among Plaintiffs' Counsel by Class Counsel in a manner that, in Class Counsel's sole opinion, fairly compensates Plaintiffs' Counsel for their respective contributions to the progress of and results obtained in the litigation.

4.2 Disbursement of Attorneys' Fees and Expenses. Plaintiffs' attorneys' fees and expenses awarded by the Court shall be paid from the Settlement Fund to Class Counsel to whom such fees and expenses are awarded by the Court within five (5) business days of the date the Court enters its order awarding such fees and expenses or five (5) business days after entry of the Final Approval Order and Judgment, whichever occurs later, notwithstanding the existence of any timely-filed objections thereto, or potential for appeal therefrom, or collateral attack on the Settlement or any part thereof. In the event the Court's Final Approval Order and Judgment is reversed, vacated or modified on motion for reconsideration or on appeal such that the amount of attorneys' fees and expenses are reduced or the Settlement is not approved as set forth in this Agreement: 1) in the case of a reduction of the fees and expenses, Class Counsel shall be jointly and severally liable and agrees to repay any excess amount of attorneys' fees and expenses plus

interest at the rate earned by the Settlement Fund to the Escrow Fund within five (5) calendar days of the event that results in reduction of the award; or 2) in the case of the Settlement not being approved or being reversed on appeal, Class Counsel shall be jointly and severally liable and agrees to repay in full all attorneys' fees and expenses plus interest at the rate earned by the Settlement Fund to LensCrafters within five (5) calendar days of the event that results in the Settlement not being approved or being reversed on appeal. Class Counsel hereby agrees to be subject to the jurisdiction of this Court for the purposes of enforcing this provision.

5. PRELIMINARY APPROVAL OF SETTLEMENT AND CERTIFICATION OF SETTLEMENT CLASS

5.1 Preliminary Approval. The Parties acknowledge that prompt approval, consummation, and implementation of this Settlement are essential. The Parties shall cooperate with each other in good faith to carry out the purposes of and effectuate this Settlement, shall promptly perform their respective obligations hereunder, and shall promptly take any and all actions and execute and deliver any and all additional documents and all other materials and information reasonably necessary or appropriate to carry out the terms of this Settlement and the transactions contemplated hereby.

5.1.1 Plaintiffs will file a motion within thirty (30) days of execution of this Agreement, requesting the Court enter a Preliminary Approval Order, which will accomplish the following, among other matters:

a. Find that the requirements of the Federal Rule of Civil Procedure 23(e)(1) have been satisfied such that the Court will likely be able to approve the Settlement under Rule 23(e)(2) and certify the Settlement Class for purposes of judgment on the proposal;

b. Find that the procedures set forth in Section VII of this Agreement, including the dissemination of Class Notice, satisfy the requirements of due process and applicable law and procedure, and approve that manner of providing notice to the Settlement Class;

c. Set a deadline for requesting exclusion from or objecting to the Settlement;
and

d. Set a date and time for the Final Approval Hearing at which the Court will finally determine the fairness, reasonableness, and adequacy of the proposed Settlement.

5.2 Certification of Settlement Class. Promptly following the execution of this Agreement, and as part of the settlement approval process contemplated in Federal Rule of Civil Procedure 23(e), the parties shall cooperate to seek certification of a Nationwide Settlement Class under Federal Rule of Civil Procedure 23(a) and (b)(3), including the appointment of Class Counsel under Federal Rule of Civil Procedure 23(g).

5.2.1 In entering into this Agreement, LensCrafters does not concede that certification of the National Settlement Class for litigation purposes would have been appropriate in this Action. LensCrafters' agreement to provisional certification does not constitute an admission of wrongdoing, fault, liability, or damage of any kind to Class Representatives or any of the provisional Settlement Class members. LensCrafters is entering into this Agreement to eliminate the burdens, distractions, expense, and uncertainty of further litigation.

5.2.2 In the event that the Court does not enter a Final Approval Order (or if a Final Approval Order is reversed on appeal), all of LensCrafters' defenses to class certification

will be preserved, and Plaintiffs and Class Counsel will be precluded from using the provisions of this Section or the Court's certification of the Settlement Class to suggest that a litigation class should be certified.

6. SETTLEMENT ADMINISTRATOR

6.1 The Settlement Administrator will work without limitation to: (i) provide Notice to potential Class members; (ii) maintain a Settlement website; (iii) process Settlement Claim Forms; (iv) confirm the issuance of payments to the Claimants; and (v) provide any necessary certifications to the Court concerning the administration and processing of Claims. The Settlement Administrator will be available to respond to inquiries from Class Counsel, counsel for LensCrafters, and Class members.

6.2 Each Party shall be entitled to full and equal access to information regarding costs expended by the Settlement Administrator in providing Notice and processing Claims in connection with the Settlement and all aspects of Notice, administration, and processing of Claims.

6.3 The Settlement Administrator, subject to such supervision and direction of the Court and/or Class Counsel as may be necessary or as circumstances may require, shall administer and/or oversee distribution of the Settlement Fund to Class members pursuant to this Agreement.

6.4 The Settlement Administrator and Class Counsel are responsible for communicating with Class members regarding the distribution of payments under the Settlement.

7. NOTICE OF SETTLEMENT AND ADMINISTRATION OF CLAIMS

7.1 The Settlement Class List shall be used to ensure Notice is appropriately disseminated to the Settlement Class.

7.2 LensCrafters shall, to the extent it possesses and can identify through reasonable means, provide the Settlement Administrator with the Settlement Class List and for all such persons LensCrafters shall, to the extent it possesses and can identify through reasonable means, provide the individual's (i) name, (ii) email address, (iii) mailing address, and (iv) the number of prescription eyeglasses purchased from LensCrafters during the Class time period.

7.3 LensCrafters will compile the Settlement Class List with all of the information listed in the preceding paragraph and provide it to the Settlement Administrator within seven (7) days after the Court enters a Preliminary Approval Order.

7.4 The contents of the Settlement Class List shall not be used for any purpose other than for providing Notice to the Class and disbursement of the Net Settlement Fund as described in this Agreement, and the contents of the Settlement Class List shall be treated as private and confidential information and not disseminated, in any manner, to anyone other than the Settlement Administrator. The Parties agree to seek entry of an order by the Court mandating that the Settlement Class List be treated as private, confidential, and proprietary.

7.5 As soon as reasonably practical after the issuance of a Preliminary Approval Order, the Settlement Administrator shall send Notice to the Class via their email addresses and, to the extent there are no valid email addresses or emails are returned undeliverable, their physical mailing addresses, to the extent listed in the Settlement Class List.

7.6 For all Class members for whom the emailed and mailed Class Notice is returned without forwarding address information, the Settlement Administrator shall use reasonable skip

tracing techniques to locate an updated email or physical mailing address to provide notice to the best-known address resulting from that search.

7.7 The Settlement Administrator shall diligently report to the Parties the number of notices originally emailed to the Class, the number of notices mailed to the Class, the number of notices initially returned as undeliverable, the number of additional notices mailed after an advanced address search, and the number of those additional notices returned as undeliverable. The Settlement Administrator shall also be responsible for maintaining a current Settlement Class List with updated email and mailing addresses.

7.8 The Settlement Administrator shall set up and maintain a website where the Settlement Administrator will post the Long Form Settlement Notice and Claim Form; a copy of this Agreement; the motion and all supporting papers requesting entry of a Preliminary Approval Order; the Preliminary Approval Order; the motion and all supporting papers requesting entry of a Final Approval Order; any motion and all supporting papers requesting payment of attorneys' fees, litigation cost reimbursements, and class representative Service Awards; and any other documents or information jointly requested by the Parties. The website will also list the date of the Final Approval Hearing.

7.9 The Class Notice will list the URL for the settlement website described in the preceding paragraph as well as a toll-free number for Settlement Class members to call to request a paper copy of the Long Form Settlement Notice and Claim Form, or other pertinent information.

7.10 No later than fourteen (14) days before the Final Approval Hearing, the Settlement Administrator will submit a declaration attesting to the dissemination of Notice consistent with this Agreement.

7.11 The Parties agree that the notice plan set forth in this section constitutes the best notice practicable under the circumstances for the Settlement Class.

7.12 Due to the number of potential Class members, it is expected that the Settlement Administrator will need to send such electronic mail notifications over a period of at least thirty (30) days. The Settlement Administrator shall use commercially reasonable efforts to complete electronic mailing of these notices to Class members by the Notice Date.

7.13 LensCrafters will cause the Settlement Administrator to serve the notice of settlement required by 28 U.S.C. § 1715 within ten (10) days of the filing of the motion seeking a Preliminary Approval Order. No later than seven (7) days before the Final Approval Hearing, LensCrafters shall cause the Settlement Administrator to file a declaration attesting to its compliance with this provision.

7.14 LensCrafters and its counsel shall not have any responsibility for or liability whatsoever with respect to (i) any act, omission or determination of Class Counsel, the Settlement Administrator, or any of their respective designees or agents, in connection with the administration of the Settlement or otherwise; (ii) the management, investment or distribution of the Settlement Fund; (iii) the formulation, design or terms of the disbursement of the Settlement Fund; (iv) the determination, administration, calculation or payment of any claims asserted against the Settlement Fund; (v) any losses suffered by, or fluctuations in the value of the Settlement Fund; or (vi) the payment or withholding of any taxes, expenses and/or costs incurred in connection with the taxation of the Settlement Fund or the filing of any returns. LensCrafters also shall have no obligation to communicate with Class members and others regarding amounts paid under the

Settlement.

7.15 Plaintiffs and Class Counsel shall not have any liability whatsoever with respect to (i) any act, omission or determination of the Settlement Administrator, or any of their respective designees or agents, in connection with the administration of the Settlement or otherwise; (ii) the management, investment or distribution of the Settlement Fund; (iii) the formulation, design or terms of the disbursement of the Settlement Fund; (iv) the determination, administration, calculation or payment of any claims asserted against the Settlement Fund; (v) any losses suffered by, or fluctuations in the value of the Settlement Fund; or (vi) the payment or withholding of any Taxes, expenses and/or costs incurred in connection with the taxation of the Settlement Fund or the filing of any returns.

8. REQUESTS FOR EXCLUSION

8.1 Class members who have not previously opted out of the Class and wish to exclude themselves from the Class must submit a written Request for Exclusion. To be effective, such a request must include the Class member's name, mailing address, e-mail address, the signature of the Class member, and substantially the following statement, "I want to opt out of the Class certified in the *Ariza v. Luxottica* litigation." Requests for Exclusion may be submitted via First Class U.S. Mail paid by the Class member and sent to the Settlement Administrator at the address provided in the Long Form Notice.

8.2 The Settlement Administrator shall promptly log each Request for Exclusion that is received and shall provide copies of the log and all such Requests for Exclusion to Plaintiffs' Counsel and counsel for LensCrafters within ten (10) business days after the deadline fixed for Class members to request exclusion. In addition, at any time prior to the deadline to request exclusion from the Class, either Party may request a copy of the then-current version of the log of Requests for Exclusion, which shall be provided by the Settlement Administrator within three (3) business days after the request is received.

8.3 Within ten (10) business days after the deadline fixed for Class members to request exclusion from the Class, Plaintiffs' Counsel shall forward to the Settlement Administrator and counsel for LensCrafters copies of any Requests for Exclusion received by Plaintiffs' Counsel.

9. OBJECTIONS

9.1 Class members who do not request exclusion from the Class may object to the Settlement. Class members who choose to object to the Settlement must file written notices of intent to object with the Court and serve copies of any such objection on counsel for the Parties, as set forth in more detail in Paragraph 9.2. Any Class member may appear at the Final Approval (Final Fairness) Hearing, in person or by counsel, and be heard to the extent permitted under applicable law and allowed by the Court, in opposition to the fairness, reasonableness and adequacy of the settlement, and on Plaintiffs' Counsel's application for an award of attorneys' fees and costs. The right to object to the Settlement must be exercised individually by an individual Class member and, except in the case of a deceased, minor, or incapacitated Person or where represented by counsel, not by the act of another Person acting or purporting to act in a representative capacity.

9.2 To be effective, a notice of intent to object to the Settlement that is filed with the Court must:

(a) Contain a caption that includes the name of the Action and the case number as follows: *Ariza et al v. Luxottica Retail North America*, No. 1:17-cv-05216-PKC-LB.

(b) Provide the name, address, telephone number and signature of the Class member filing the intent to object;

(c) Provide the approximate date of his/her purchase(s) of prescription eyeglasses from LensCrafters;

(d) Be filed with the United States District Court for the Eastern District of New York Clerk of the Court not later than thirty (30) days prior to the Final Approval (Final Fairness) Hearing;

(e) Be served on Plaintiffs' Counsel and counsel for LensCrafters so as to be received no later than thirty (30) days prior to the Final Approval (Final Fairness) Hearing;

(f) Contain the name, address, bar number and telephone number of the objecting Class member's counsel, if represented by an attorney;

(g) Contain the number of class action settlements objected to by the Class member in the last three years; and

(h) State whether the objecting Class member intends to appear at the Final Approval (Final Fairness) Hearing, either in person or through counsel.

9.3. In addition to the foregoing, if the Class member is represented by counsel and such counsel intends to speak at the Final Approval (Final Fairness) Hearing, a notice of intent to object must contain the following information:

(a) A detailed statement of the specific legal and factual basis for each and every objection; and

(b) A detailed description of any and all evidence the objecting Class member may offer at the Final Approval (Final Fairness) Hearing, including copies of any and all exhibits that the objecting Class member may introduce at the Final Approval (Final Fairness) Hearing.

9.4. Any Class member who does not file a timely and adequate notice of intent to object in accordance with this Section 9 waives the right to object or to be heard at the Final Approval (Final Fairness) Hearing and shall be forever barred from making any objection to the Settlement. To the extent any Class member objects to the Settlement, and such objection is overruled in whole or in part, such Class member will be forever bound by the Final Approval Order and Judgment of the Court.

9.5. No later than fifteen (15) calendar days before the Final Approval (Final Fairness) Hearing, the Settlement Administrator shall provide to Plaintiffs' Counsel and counsel for LensCrafters the following information:

(a) The number of e-mail notices sent to Class members;

(b) The number of Postcard Notices mailed to Class members;

(c) The approximate number of visits to the Settlement website from the date of entry of a Preliminary Approval Order;

(d) The number of Class members who have to date submitted Approved Claim forms;

(e) The number of Class members who have requested exclusion from the Settlement; and

(f) Such other similar tracking information reasonably requested by Plaintiffs' Counsel or counsel for LensCrafters.

10. FINAL APPROVAL

10.1 The Notice to the Class shall contain a date, time and location for the Final Approval (Final Fairness) Hearing to be conducted by the Court. The Final Approval (Final Fairness) Hearing shall be set by the Court after entry of the Preliminary Approval Order on a date at least one hundred (100) days after entry of the Preliminary Approval Order, so as to comply with the Class Action Fairness Act.

10.2 Upon final approval of this Settlement Agreement, the Final Approval Order and Judgment shall be entered by the Court, which shall, *inter alia*:

(a) Grant final approval to the Settlement and Settlement Agreement as fair, reasonable, adequate, in good faith and in the best interests of the Class, and order the Parties to carry out the provisions of this Settlement Agreement;

(b) Dismiss with prejudice the Action against LensCrafters and/or the LensCrafters Released Parties;

(c) Adjudge that the Plaintiff Releasing Parties are conclusively deemed to have released the LensCrafters Released Parties and that LensCrafters is conclusively deemed to have released the Plaintiff Releasing Parties.

(d) Bar and permanently enjoin each Class member from prosecuting against the LensCrafters Released Parties any and all of the Released Claims; and

(e) Reserve continuing jurisdiction by the Court to preside over any ongoing proceedings relating to the Claims or this Settlement Agreement.

11. CLAIM PROCESSING AND CASH PAYMENTS

11.1 Class members must electronically complete and sign the appropriate Claim Form and submit it to the Settlement Administrator via an electronic Claim Form submission process to be established by the Settlement Administrator, submitted not later than thirty (30) calendar days after entry of the Final Approval Order. For those Class members who have requested hard copy Claim Forms, they may submit such Claim Forms via U.S. mail. A Claim Form shall be considered defective if the Claimant fails to timely submit the Claim Form, provide the required information on the Claim Form, or to electronically (or in the case of a hard copy Claim Form, manually) sign certifying that the Claimant is entitled to the benefit sought. The deadline for submitting a Claim Form set forth herein shall be the "Claim Form Submission Date."

11.2 Class members will be entitled to file a Claim for each pair of prescription eyeglasses they purchased from LensCrafters during the Class Period.

11.3 Cash payments made pursuant to Paragraph 3.2 above will be made to Claimants via electronic means based on the information provided on the Claim Form, or in the event the Claimant so requests, a physical check will be mailed to the address provided on the Claim Form.

11.4 Ninety (90) calendar days or as soon as practical after the entry of the Final Approval Order and Judgment and the exhaustion of any appeals (e.g., deadline for filing notice of appeal), the Settlement Administrator will distribute payments, as set forth in Paragraph 11.3 above, to the Class members who have submitted an Approved Claim, as well as Service Awards to the Class Representatives as set forth in Paragraph 4.1. However, in no event will payments be made to Class members or Class Representatives until the Settlement Fund is fully funded by LensCrafters, pursuant to Paragraph 3.1.1(i)-(ii) above.

11.5 Within sixty (60) calendar days or as soon as practical after the entry of the Final Approval Order, the Settlement Administrator will notify Class Counsel of any Class member who has submitted a deficient Claim Form, and those Class members will be given ten (10) calendar days to cure the deficiency.

11.6 The Class members acknowledge that the Claims process may take longer than described above due to the number of potential Class members. The Settlement Administrator will employ all due commercially reasonable speed to distribute claimed cash payments as set forth herein.

11.7 Other than the Service Awards set forth in Paragraph 3.1.2, the cash payments set forth above shall be the only payments to which any Class member will be entitled pursuant to this Settlement Agreement, and each Class member will only be entitled to such cash payment if they submit an Approved Claim.

12. RELEASE BY ALL SETTLEMENT CLASS MEMBERS

12.1 For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each member of the Class who has not filed a valid Request for Exclusion ("Plaintiff Releasing Parties"), on behalf of themselves, their current, former, and future heirs, executors, administrators, successors, attorneys, insurers, agents, representatives, and assigns, and any Person they represent, fully and forever release, acquit, and discharge the LensCrafters Released Parties collectively, separately, individually and severally, from, and covenant not to sue for, any and all claims, suits, demands, rights, liabilities, grievances, damages, remedies, liquidated damages, punitive damages, attorneys' fees, penalties, losses, actions, and causes of action of every nature and description whatsoever, whether known or unknown, suspected or unsuspected, asserted or unasserted, whether in tort, contract, statute, rule, ordinance, order, regulation, common law, public policy, equity, or otherwise, whether class, representative, individual or otherwise in nature, that were alleged or asserted in the Action or that arise out of or relate directly or indirectly in any manner whatsoever to facts alleged or asserted or that could have been alleged or asserted in the Action ("Plaintiff Released Claims"). It is expressly intended and understood by the Parties that Plaintiff Released Claims shall in all respects be construed as broadly as possible, consistent with all applicable law, as a complete settlement, accord, and satisfaction of the Plaintiff Released Claims; provided, however that the Plaintiff Released Claims shall not include any claims to enforce the Settlement Agreement or Plaintiffs' Counsel's request for fees and expenses in the Action pursuant to Paragraph 4. With respect to the Plaintiff Released Claims, the Plaintiff Releasing Parties shall expressly waive any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States which is similar, comparable, or equivalent to California Civil Code § 1542, which provides:

**A general release does not extend to claims which
the creditor does not know or suspect to exist in his**

or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

In agreeing to the foregoing waiver, the Plaintiff Releasing Parties expressly acknowledge and understand that they may hereafter discover facts in addition to or different from those which they now believe to be true with respect to the subject matter of the matters released herein, but expressly agree that they have taken these possibilities into account in electing to participate in this release, and that the release given herein shall be and remain in effect as a full and complete release notwithstanding the discovery or existence of any such additional or different facts, as to which the Releasing Parties expressly assume the risk.

12.2 The Plaintiff Releasing Parties, on behalf of themselves, their current, former, and future heirs, executors, administrators, successors, attorneys, insurers, agents, representatives, and assigns, and any Person they represent, agree not to sue or otherwise make a claim against any of the LensCrafters Released Parties that is in any way related to the LensCrafters Released Claims.

12.3 For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, LensCrafters fully and forever releases, acquits, and discharges Plaintiff Releasing Parties, collectively, separately, individually and severally, from, and covenant not to sue for, any and all claims, suits, demands, rights, liabilities, grievances, damages, remedies, liquidated damages, losses, actions, and causes of action of every nature and description whatsoever, whether known or unknown, suspected or unsuspected, asserted or unasserted, whether in tort, contract, statute, rule, ordinance, order, regulation, common law, public policy, equity, or otherwise, whether class, representative, individual or otherwise in nature, that were alleged or asserted in the Action, or that arise out of or relate directly or indirectly in any manner whatsoever to facts alleged or that could have been alleged or asserted in the Action ("LensCrafters Released Claims"); provided, however that the LensCrafters Released Claims shall not include any claims to enforce the Settlement Agreement or Plaintiffs' Counsel's request for fees and expenses in the Action pursuant to Paragraph 4. With respect to the LensCrafters Released Claims, LensCrafters shall expressly waive any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States which is similar, comparable, or equivalent to California Civil Code § 1542, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

In agreeing to the foregoing waiver, LensCrafters expressly acknowledges and understands that it may hereafter discover facts in addition to or different from those which it now believes to be true with respect to the subject matter of the matters released herein, but expressly agrees that it has taken these possibilities into account in electing to participate in this release, and that the release given herein shall be and remain in effect as a full and complete release notwithstanding the discovery or existence of any such additional or different facts, as to which the LensCrafters expressly assume the risk.

12.4 As of the Effective Date, by operation of the entry of the Final Approval Order and Judgment, each Class member who does not file a valid Request for Exclusion, automatically,

upon entry of the Final Approval Order and Judgment, shall be held to have fully released, waived, relinquished and discharged the LensCrafters Released Parties from the Plaintiff Released Claims, to the fullest extent permitted by law, and shall be enjoined from continuing, instituting or prosecuting any legal proceeding against the LensCrafters Released Parties relating in any way whatsoever to the Plaintiff Released Claims.

12.5 The Plaintiff Releasing Parties and LensCrafters stipulate and agree that upon the Court's entry of the Final Approval Order and Judgment, this Action shall be dismissed with prejudice.

13. PUBLIC STATEMENTS

13.1 All public disclosures required by law, such as settlement notice, shall be neutral and mutually acceptable to both parties. The Parties shall not make any public statements disparaging any other of the Parties. Any public comments from the Parties about the settlement or litigation, other than disclosures required by law, shall not substantially deviate from words to the effect that the Parties reached a mutually acceptable resolution by way of a mediated settlement. The Parties hereby agree that they will not issue any press releases related to this Settlement Agreement or the Action. Notwithstanding the foregoing, Class Counsel shall be permitted to post on its website that it secured final approval of a \$39 million settlement from LensCrafters for a nationwide class. In addition, a Party may publicly respond to an article or other public statement if the article or other public statement contains negative or disparaging comments about that Party, provided that the Party shall provide notice of such public response before publication.

14. AMENDMENT

14.1 This Agreement may be modified, amended or supplemented only by written agreement signed by or on behalf of all Parties and, if such modification, amendment or supplement is to be executed and become effective subsequent to the entry of the Preliminary Approval Order, only with the approval of the Court.

15. AUTOMATIC TERMINATION OF SETTLEMENT AGREEMENT AND TERMINATION RIGHTS

15.1 In the event that this Settlement Agreement does not become final for any reason,

(a) Except as expressly stated herein, this Settlement Agreement shall automatically become null and void and have no further force or effect, and all proceedings that have taken place with regard to this Settlement Agreement and the Settlement shall be without prejudice to the rights and contentions of the Parties hereto;

(b) Each Party shall be restored to their respective positions as of the date this Settlement Agreement is executed;

(c) The amount deposited by LensCrafters into the Escrow Account, plus accrued interest, shall be refunded to LensCrafters, less any costs incurred by the settlement administrator in providing notice and processing claims. Further, if the Final Approval Order is reversed on appeal, then the Parties hereby agree that at LensCrafters' request and in LensCrafters' sole discretion, the full balance of the Settlement Amount then-remaining in the Escrow Account, including accrued interest, shall be refunded to LensCrafters within five (5) calendar days of said request. Class Counsel must also repay to LensCrafters all funds withdrawn from the Escrow

Account for Attorneys' Fees and Costs awarded by the Court to Class Counsel within five (5) calendar days of said request.

(d) This Settlement Agreement, all of its provisions (including, without limitation, any provisions concerning Class certification), and all negotiations, statements and proceedings relating to this Settlement Agreement shall be without prejudice to the rights of any of the Parties, each of whom shall be restored to their respective position as of the date of signing this agreement;

(e) This Settlement Agreement, any provision of this Settlement Agreement, and the fact of this Settlement Agreement having been made, shall not be admissible or entered into evidence for any purpose whatsoever; nor will any information produced solely in connection with any of the Parties' mediations be admissible. (f) Any judgment or order entered in connection with this Settlement Agreement will be vacated and will be without any force or effect; and

(g) This Section shall survive any termination of this Settlement Agreement.

15.2 LensCrafters shall have the right to terminate this Settlement Agreement by serving on Class Counsel and filing with the Court a notice of termination within fourteen (14) days after its receipt of the information provided under Paragraphs 8.2 and 8.3, if the number of Class members who file valid Requests for Exclusion equals or exceeds 5% of the Class.

16. SEVERABILITY

16.1 With the exception of the provisions contained in Section 12 herein, in the event any covenant, term or other provision contained in this Settlement Agreement is held to be invalid, void or illegal, the same shall be deemed severed from the remainder of this Settlement Agreement and shall in no way affect, impair or invalidate any other covenant, condition or other provision herein. If any covenant, condition or other provision herein is held to be invalid due to its scope or breadth, such covenant, condition or other provision shall be deemed valid to the extent of the scope or breadth permitted by law.

17. INCORPORATION OF EXHIBITS

17.1 All exhibits attached hereto are hereby incorporated by reference as though set forth fully herein and are a material part of this Settlement Agreement. Any notice or other exhibit attached hereto that requires approval of the Court must be approved without material alteration from its current form in order for this Settlement Agreement to become effective.

18. GOVERNING LAW AND COMPLIANCE WITH TERMS OF SETTLEMENT AGREEMENT

18.1 All questions with respect to the construction of this Settlement Agreement and the rights and liabilities of the parties hereto shall be governed by the laws of the State of New York, without giving effect to its law of conflict of laws.

18.2 The Court shall have continuing jurisdiction to resolve any dispute that may arise with regard to the terms and conditions of this Settlement Agreement as well as enforce the injunctions set forth in this Agreement, and the Parties hereby consent to such jurisdiction.

19. NO ADMISSION OF WRONGDOING

19.1 This Settlement Agreement is made to terminate any and all controversies, real or potential, asserted or unasserted, and claims for injuries or damages or any nature whatsoever, real

or potential, asserted or unasserted, between LensCrafters and the Plaintiffs. Neither the execution and delivery of this Settlement Agreement nor compliance with its terms shall constitute an admission of any fault or liability on the part of LensCrafters, or any of its respective agents, attorneys, representatives, or employees. LensCrafters in no way admits fault or liability of any sort and, in fact, LensCrafters expressly denies fault and liability.

20. PREPARATION OF SETTLEMENT AGREEMENT, SEPARATE COUNSEL AND AUTHORITY TO ENTER SETTLEMENT AGREEMENT

20.1 The Parties and their counsel have each participated and cooperated in the drafting and preparation of this Settlement Agreement. Hence, in any construction to be made of this Settlement Agreement, the same shall not be construed against any Party as drafter of the Settlement Agreement.

20.2 The Parties each acknowledge that he, she or it has been represented by counsel of his, her or its own choice throughout all of the negotiations that led to the execution of this Settlement Agreement and in connection with the preparation and execution of this Settlement Agreement.

20.3 The Parties each represent and warrant that each of the Persons executing this Settlement Agreement is duly empowered and authorized to do so.

21. HEADINGS

21.1 The headings contained in this Settlement Agreement are for reference only and are not to be construed in any way as a part of the Settlement Agreement.

22. COUNTERPARTS

22.1 This Settlement Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

23. BINDING EFFECT

23.1 This Settlement Agreement shall be binding upon and inure to the benefit of the Parties hereto and to their respective heirs, assigns, and successors-in-interest.

24. ENTIRE AGREEMENT

24.1 This Settlement Agreement represents the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior contemporaneous oral and written agreements and discussions. Each of the Parties covenants that he, she or it has not entered into this Settlement Agreement as a result of any representation, agreement, inducement, or coercion, except to the extent specifically provided herein. Each Party further covenants that the consideration recited herein is the only consideration for entering into this Settlement Agreement and that no promises or representations of another or further consideration have been made by any Person.

25. NOTICE

25.1 All notices, requests, demands and other communications required or permitted to be given pursuant to this Settlement Agreement shall be in writing and shall be delivered

personally or mailed postage pre-paid by First Class U.S. Mail to the following persons at their addresses set forth as follows:

Class Counsel

COHEN MILSTEIN SELLERS & TOLL PLLC
Geoffrey Graber
1100 New York Avenue, N.W.
Suite 500 East
Washington, DC 20005-3964

LensCrafters' Counsel

BLANK ROME LLP
Frank A. Dante
One Logan Square
130 N. 18th Street
Philadelphia, PA 19103

WHEREFORE, the undersigned, being duly authorized, have caused this Settlement Agreement to be executed on the dates shown below and agree that it shall take effect on the last date of execution by all undersigned representatives of the Parties.

DATED June 27, 2023

PLAINTIFF:



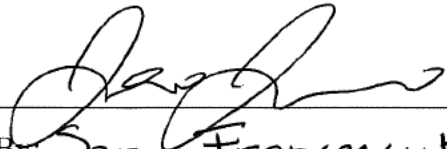
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Telephone: (215) 569-5645

Attorneys for Luxottica of America Inc. d/b/a LensCrafters f/k/a Luxottica Retail North America Inc. d/b/a LensCrafters



By: Sara Francescutto

Its: CFO North America

Date: 6/21/23

Luxottica of America Inc. d/b/a LensCrafters f/k/a Luxottica Retail North America Inc. d/b/a LensCrafters